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CITY OF PLEASANT HILL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARIO MORENO, an individual,

Plaintiff,

v.

CITY OF PLEASANT HILL; and DOES 1-25,
inclusive,

Defendants.

Case No. _____

**DEFENDANT CITY OF PLEASANT
HILL'S NOTICE OF REMOVAL OF
CIVIL ACTION**

FEDERAL QUESTION JURISDICTION

Complaint Filed: February 14, 2023
Removal Filed: April 14, 2023
Trial Date: TBD

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA:**

PLEASE TAKE NOTICE that Defendant CITY OF PLEASANT HILL (the "City" or "Defendant"), hereby removes the below-referenced action from the Superior Court in the State of California, in and for the County of Contra Costa, to the United States District Court for the Northern District of California. The removal is based on 28 U.S.C. sections 1331, 1367, 1441(a), and 1446, and, specifically, on the following grounds:

SERVICE AND PLEADINGS FILED IN STATE COURT

1. On or about February 14, 2023, Plaintiff MARIO MORENO ("Plaintiff") filed an

1 action in the Superior Court of the State of California, in and for the County of Contra Costa,
2 entitled *Mario Moreno v. City of Pleasant Hill, and DOES 1 through 25, inclusive*, which was
3 designated by that court as case number C23-00333. Plaintiff served the City on March 15, 2023.
4 The City received additional documents on March 20, 2023. Defendant is filing this removal
5 within 30 days of having been served. True and correct copies of the following documents are
6 attached as **EXHIBIT A**: Civil Case Cover Sheet; Summons; Complaint for Damages ; Notice of
7 Case Management Conference.

8 2. On April 14, 2023, the City timely filed its Answer to the Complaint (“Answer”)
9 with the Superior Court of the State of California County of Contra Costa, making a general
10 denial as permitted by California Code of Civil Procedure section 431.30(d), and asserting
11 various affirmative defenses. A true and correct copy of the City’s Answer is attached as
12 **EXHIBIT B** and incorporated herein by reference.

13 3. Defendant is informed and believes that the aforementioned exhibits constitute all
14 of the process, pleadings, and orders on file in the State Court action.

15 **TIMELINESS OF REMOVAL**

16 4. Defendant filed and served this Notice of Removal on April 14, 2023, which was
17 within the thirty (30) day deadline after Defendant was served with a copy of the Complaint and
18 within one (1) year after the state court action was filed. *See Murphy Bros., Inc. v. Michetti Pipe*
19 *Stringing, Inc.*, 526 U.S. 344, 353 (1999) (actual service of process is the official trigger for
20 responsive action by a named defendant, as opposed to receipt of complaint through other
21 means). Thus, the Notice of Removal was filed within the time period provided by 28 U.S.C.
22 section 1446.

23 **NOTICE TO ALL PARTIES AND STATE COURT**

24 5. In accordance with 28 U.S.C. section 1446(d), Defendants’ counsel certifies that a
25 copy of this Notice of Removal and all supporting papers promptly will be served on all parties
26 and filed with the Clerk of Merced County Superior Court. As a result, all procedural
27 requirements under 28 U.S.C. section 1446 are satisfied.

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FEDERAL QUESTION

6. This Court has original jurisdiction of this action pursuant to 28 U.S.C. section 1331. This action may be removed to this Court by Defendant pursuant to 28 U.S.C. section 1441(a) because the action involves alleged violations of the laws of the United States. Specifically, Plaintiff alleges that Defendant retaliated against Plaintiff in violation of the Family and Medical Leave Act ("FMLA"), 29 U.S.C. sec. 2601, et seq. (**EXHIBIT A**, Complaint at ¶¶ 52-57).

7. This Court has supplemental jurisdiction, pursuant to 28 U.S.C. section 1367(a), over the remaining claims and issues alleged in the Complaint, as they all arise from the same nucleus of operative facts; i.e., the same transactions or occurrences. Plaintiff's allegations concern his employment with Defendant and the events leading to Plaintiff's termination. Each of Plaintiff's claims would ordinarily be expected to be tried in a single judicial proceeding.

8. Defendant reserves the right to amend or supplement the statement of Defendant's grounds for removal of this case based on discovery exchanged between the parties or circumstances that become known during the investigation of the case.

VENUE IS PROPER

9. Venue lies in the United States District Court for the Northern District of California pursuant to 28 U.S.C. sections 1391(b) and 1441(a) because this is the judicial district in which the action arose, and the state action was filed in this district.

WHEREFORE, Defendant prays that the above action now pending against it in the Superior Court of the State of California, County of Contra Costa, be removed to this Court.

Date: April 14, 2023

JACKSON LEWIS P.C.

By: /s/ Shane R. Larsen
MICHAEL J. CHRISTIAN
SHANE R. LARSEN

Attorneys for Defendant
CITY OF PLEASANT HILL

PROOF OF SERVICE

I, the undersigned declare:

I am employed in the County of Sacramento, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 400 Capitol Mall, Suite 1600, Sacramento, California 95814.

On the date set forth below, I served the within:

**DEFENDANT CITY OF PLEASANT HILL'S NOTICE OF
REMOVAL OF CIVIL ACTION**

on the parties below:

✓ by forwarding a true and correct copy by e-mail from e-mail address angie.lombard@jacksonlewis.com to the person(s) at the e-mail address(es) set forth below.

by placing a true and correct copy thereof enclosed in a sealed envelope with postage thereon fully prepaid for deposit in the United States Post Office mailbox, at my business address shown above, following Jackson Lewis P.C.'s ordinary business practices for the collection and processing of mail, of which I am readily familiar, and addressed as set forth below. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

by depositing a true and correct copy thereof enclosed in a sealed envelope with delivery fees thereon fully prepaid in a box or other facility regularly maintained by Federal Express or delivering to an authorized courier or driver authorized by Federal Express to receive documents, addressed as set forth below.

HOYER & HICKS

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Attorneys for Plaintiff

MARIO MORENO

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 14, 2023, at Sacramento, California.

/s/ Angie Lombard

Angie Lombard

4882-7096-9437, v. 1